

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b))

Description of Case

S.T.R. 105 of 2003

Date of decision :- 28-7-2006

A.F.R. (Approved for Reporting)

Not approved for reporting

Date :- 28-7-2006

Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

**IN THE HIGH COURT OF UTTARANCHAL AT
NAINITAL**

Sales Tax Revision No. 105 of 2003

{Old No.1796 of 1991}

M/s Rajeshwar Prasad Sunil Kumar Kankhal, Haridwar	...Applicant/Revisionist	
	Versus	
The Commissioner Sales Tax U.P. Lucknow		... Respondent

Mr. Pitamber Maulekhi learned Addl. Advocate General for the respondent.

Hon'ble J. C. S. Rawat, J.

1. This revision, preferred under section 11 of the U.P. Sales Tax Act, 1948, is directed against the judgment and order dated 21.08.1991, passed by the Sales Tax Tribunal, Muzaffarnagar Bench, Camp Dehradun dismissing the Second Appeal No.18/1990 on the ground that the appellant did not remove the defects. This revision had been preferred before the Allahabad High Court from where it has been received by transfer under the U.P. Reorganization Act, 2000, for its disposal. Notices was sent to the revisionist. Inspite of service of notice, none is appearing on behalf of the revisionist.

2. Heard the learned Addl. Advocate General for the respondent.

3. The question of law involved in the revision is that "whether the learned Tribunal was justified in dismissing the appeal on the ground that the assessee had not removed the defects".

4. I have gone through the entire record with the help of the learned Addl. Advocate General.

5. The case pertains to the assessment year 1976-77. On 21.08.1991 the learned Tribunal rejected the appeal filed by the assessee-revisionist as time bared. The learned Tribunal had rejected the same on the ground that since the appeal had not been filed on the water mark or stout paper and also that the assessee failed to file additional true copies of the order of the Assistant Commissioner (Judicial) Sales Tax. The assessee had alleged in this revision that the date fixed before the Tribunal on 20.08.1991 assessee's proprietor went to Dehradun at 12 noon. The distance from Kankhal to Dehradun hardly takes two hours but the bus developed serious mechanical defect between Haridwar and Dehradun, which was repaired only at 4pm and except this but no other conveyance was available. The proprietor reached Dehradun only at 5:30pm and by that time the court had already arisen and necessary orders were passed. Perusal of the orders reveals that there was one day's delay in filing the appeal before the Tribunal. The appeal was also found defective on the ground that the memo of appeal was not filed on the water mark or stout paper and additional true copies of the order of the Assistant Commissioner were not filed. The said appeal was dismissed by the learned Tribunal for want of prosecution. The Tribunal had further observed that the memo of appeal was admitted though there was a delay of one day. The assessee had sufficiently explained for not reaching to the Tribunal on the date fixed. There is no rebuttal on behalf of the respondent. There is sufficient ground for not being present before the Tribunal.

6. In view of the above facts and circumstances, I find it expedient in the interest of justice that the assessee-revisionist should be given an opportunity and the case

should be remanded to the Tribunal. The case is liable to be remanded to the learned Tribunal.

7. Therefore, the revision is allowed. The case is remanded to the learned Tribunal, who will pass the appropriate orders in the light of the observations made above. The impugned order dated 21.08.1991 passed by the Tribunal is set aside.

(J. C. S. Rawat, J.)

Dated 28.07.2006
LSR